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Proceeding by the City of Richmond against H. W. Goodwyn and others. From a judgment allowing defendants interest on the value of certain condemned land from the date of the filing a commissioners' report, plaintiff brings error. Amended and affirmed.

H. R. Pollard and *Geo. Wayne Anderson*, both of Richmond, for plaintiff in error.

A. W. Patterson and *H. W. Goodwyn*, both of Richmond, for defendants in error.

COMMONWEALTH ex rel. CITY OF PORTSMOUTH v. PORTSMOUTH GAS CO.

June 15, 1922.

[112 S. E. 792.]

1. Quo Warranto (§ 52*)—Demurrer Admits Facts But Not Conclusions.—A demurrer to an information in the nature of a writ of quo warranto admitted the facts, but not the conclusions of law stated in the information.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 463.]

2. Corporations (§ 37*)—Amendment of Charter to Extend Period of Existence Does Not Break Continuity of Existence.—The amendment of a charter of a gas company by extending it for a further period did not constitute a lapse or break in the corporate existence of the company.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 546.]

3. Municipal Corporations (§ 680, 681 (1*))—Legislative Authority to Grant Franchises for Use of Streets Held Conferred.—A town or city must have legislative authority to grant franchises for the use of its streets, but such authority was conferred by Code 1849, c. 56, § 23, providing that no company should occupy the streets of any town until the corporate authorities should have assented thereto.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 167.]

4. Gas (§ 7 (1*))—Franchise to Use Streets Held Not Limited to Time Specified.—A resolution of a municipal council, granting a gas company the exclusive privilege for 15 years of laying its pipes through the street, did not expressly or by necessary implication limit the right to use the streets to 15 years, and where for more than 60 years it continued to use the streets and, pursuant to contracts, furnished gas for the streets and public buildings, it had the municipality consent to the use of the streets for an indefinite time.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 704.]

5. Gas (§ 7 (1*))—Matters to Be Considered in Construing Franchises to Use Streets Stated.—Where resolution of a municipal council granting a gas company the right to use the streets did not ex-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

pressly or impliedly state when such right should terminate, the situation of the parties when the contract was made, the subject-matter the purposes to be accomplished, and the subsequent construction of the contract by the parties themselves must be looked to.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 704.]

6. Gas (§ 7 (1*))—Franchise Strictly Construed But So As to Extend Reasonable Protection to Company.—Grants to gas companies of the right to use the streets of a municipality are to be strictly construed, but in construing such grants reasonable and just protection will be extended to public utility corporations whose investments are necessarily based upon calculations of future growth and development.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 704.]

7. Gas (§ 7 (1*))—Charter Subsequently Granted Cannot Be Considered in Construing Franchise Grant.—In construing a resolution granting the right to use streets to individuals and through them to a proposed gas company not yet incorporated, the charter subsequently granted cannot be looked to as throwing any light on the meaning of the resolution.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 704.]

8. Gas (§ 7 (1*))—Company Held Not Authorized to Use Streets without Consent of Town.—Under Code 1849, c. 56, § 23, and chapter 57, § 37, a gas company whose charter authorized it to use the streets of a town and provided that it should be subject to all the provisions of chapters 56 and 57 of the Code, "except so far as this act may otherwise prescribe," was not authorized to use the streets without the consent of the municipality.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 551.]

9. Constitutional Law (§§ 134, 292*)—(§ 7 (1*))—Provisions as to Franchise Not Retrospective, as It Would Impair the Obligation of the Contract and Deny Due Process.—Const. 1902, §§ 124 and 125, providing that gas companies shall not use the streets without the consent of the corporate authorities and that franchises shall only be granted to gas companies on sale to the highest bidder and for a period of not exceeding 30 years, do not operate retrospectively so as to apply to a company which had acquired the right to use the streets indefinitely before the new Constitution was adopted, as a retrospective effect would impair the obligation of the contract and deprive the company of its property without due process of law, in violation of Const. U. S. art. 1, § 10, cl. 1, and Amendment 14, § 1.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 216.]

10. Gas (§ 7 (1*))—Corporations Do Not Surrender Proprietary or Contractual Rights by Accepting Extension of Charter.—Under Const. 1902, § 158, providing that every corporation accepting any amendment or extension of its charter shall be presumed to have thereby surrendered nonrepealable features of its charter or any exclusive rights

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

and privileges, a gas company by obtaining an extension of its charter did not surrender its proprietary or contractual right to use the streets of a city, where it had acquired a grant of such right for an indefinite time.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 543.]

Error to Hustings Court of Portsmouth.

Information in the matter of quo warranto by the Commonwealth, on relation of the City of Portsmouth, against the Portsmouth Gas Company. Judgment for defendant on demurrer, and the relator brings error. Affirmed.

Mann & Tyler, of Norfolk, for plaintiff in error.

Goodrich Hatton, of Portsmouth, for defendant in error.

BARKER *v.* COMMONWEALTH. (No. 72.)

June 20, 1922.

[112 S. E. 798.]

Criminal Law (§ 585*)—Evidence Held Insufficient to Establish Dates of Sales of Liquor.—Evidence on a trial for the sale of ardent spirits held insufficient to establish the dates of sales as within 12 months prior to indictment.

[Ed. Note.—For other cases, see 8 Va. W. Va. Enc. Dig. 34.]

Error to Circuit Court, Lee County.

Bill Barker was convicted for the illegal sale of ardent spirits, and he brings error. Reversed and remanded.

Pennington & Pennington, of Pennington Gap, for plaintiff in error.

John R. Saunders, Atty. Gen., and *J. D. Hank, Jr.*, Asst. Atty. Gen., for the Commonwealth.

COOPER *v.* COMMONWEALTH. (No. 75.)

June 20, 1922.

[112 S. E. 799.]

1. Indictment and Information (§§ 86 (3), 87 (4)*)—Allegation of Particular Place and Time Held Not Necessary.—An indictment for violation of the prohibition act need not allege a sale at any particular time or place if the time is within one year prior to indictment.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 241.]

2. Criminal Law (§ 1202 (3)*)—In a Prosecution for Second Violation of Prohibition Law, Evidence Held to Establish First Offense.—In a prosecution for a second violation of Prohibition Law, §§ 3, 3a, 4, and 5, a judgment reciting that accused had been convicted "on an

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